

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CACR06-489

February 7, 2007

CHOINCEY K. JACKSON
APPELLANT

APPEAL FROM THE MISSISSIPPI
COUNTY CIRCUIT COURT
[CR-2004-249]

V.

HON. CHARLES DAVID BURNETT,
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Choincey Jackson was convicted in the Mississippi County Circuit Court of delivery of a controlled substance, cocaine. He was sentenced to ten years' imprisonment and ordered to pay a \$1000 fine. On appeal, Jackson argues that the trial court made two evidentiary errors and that there is insufficient evidence to support his conviction. We disagree.

We first address the sufficiency of the evidence because the Double Jeopardy Clause precludes a second trial when a conviction is reversed for insufficient evidence. *Harris v. State*, 284 Ark. 247, 681 S.W.2d 334 (1984) (citing *Burks v. United States*, 437 U.S. 1 (1978)). When reviewing a challenge to the sufficiency of the evidence we view the evidence in the light most favorable to the State and consider only the evidence that supports the

verdict. *O'Neal v. State*, 356 Ark. 674, 158 S.W.3d 175 (2004); *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003). The conviction will be affirmed if there is substantial evidence to support it. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.*

The trial testimony established that on May 7, 2004, Osceola Police Sergeant Mike Russell worked with confidential informant Akeem Veasley to set up a drug buy with Jackson. After a number of attempted cellular-phone calls, Veasley made contact with Jackson and set up the time and location for the buy. This conversation was recorded, and at trial Sergeant Russell identified Jackson's voice on the recording. Sergeant Russell provided Veasley with buy money for the transaction that he had previously photocopied.

Jackson arrived at Veasley's house in a vehicle driven by Julius Lovelace. Jackson exited the vehicle and met Veasley outside. The two men then entered the vehicle. Soon thereafter, Veasley exited the vehicle and re-entered his home. Sergeant Russell videotaped the transaction and independently witnessed Veasley and Jackson's exchange.

Once inside, Sergeant Russell searched Veasley and found cocaine but no buy money. Based on this discovery, Russell contacted police officers who stopped Jackson's vehicle and arrested him. The buy money was found in Jackson's possession along with a cellular phone that had Veasley's cell phone number listed under the categories of "missed" and "received" calls. Jackson was taken to the police station where, Sergeant Russell testified, Jackson asked to speak to him and told him: "What, you got me on tape selling a twenty? Why can't I see

the tape?” Sergeant Russell said: “I know you don’t sell twenties. You’re bigger than that. You sell ounces.” Jackson smiled and said, “I’m glad you know that.” Jackson then named his cousins and said they would, “All be out on the streets at the same time. ... We’re gonna set these streets on fire.” In response, Sergeant Russell said he already found one of Jackson’s cousins and \$9000 cash to which Jackson replied: “That’s just a weekend’s work. Try 30 or 40 thousand. If you want to touch me, you better get the feds.”

Another officer, Lieutenant Collins, testified that while at the police station he overheard Jackson tell Lovelace: “Man, don’t you get me sent off. Don’t tell them shit because I ain’t told them nothing.” A jailer at the police station testified that Jackson told him that he needed some Tylenol because he felt sick after swallowing crack when he was arrested. Another jailer testified that he had to spray Jackson twice with a chemical to restrain Jackson when he attempted to escape.

In Arkansas, it is unlawful to deliver or possess with the intent to deliver a controlled substance. Ark. Code Ann. § 5-64-401 (Repl. 2005). Here, there is substantial evidence to support Jackson’s conviction. Sergeant Russell testified he witnessed the drug transaction. Other evidence was introduced that not only corroborates Sergeant Russell’s testimony but incriminates Jackson. Therefore, the trial court’s denial of Jackson’s motion for directed verdict is affirmed.

Jackson’s second point on appeal contains two arguments involving the videotape of the buy. The first argument is that the trial court erred by admitting the videotape into

evidence. However, Jackson failed to preserve this issue for appeal. Prior to trial, Jackson filed a motion in limine seeking to exclude the videotape because it failed to show him delivering cocaine. The trial court did not enter an order ruling on this motion. At trial, Jackson objected to the admission of the videotape on new grounds, that Veasley, the informant, was not testifying and thus was not subject to cross-examination. This objection was overruled.

On appeal, Jackson argues that the videotape should be excluded and reverts back to the argument made in his motion in limine—that the videotape fails to show him engaged in a drug transaction. Because Jackson failed to obtain a ruling from the trial court on this argument, he has failed to preserve it for appeal. *See Ashley v. State*, 358 Ark. 414, 191 S.W.3d 520 (2004) (finding appellant has obligation to obtain ruling to preserve an issue for appeal).

Jackson's second argument involving the videotape is that the trial court erred in allowing Sergeant Russell to testify about what the videotape depicted. In matters relating to the admission of evidence, a trial court's ruling is entitled to great weight and will not be reversed absent an abuse of discretion. *Cook v. State*, 345 Ark. 264, 45 S.W.3d 820 (2001). In ruling the testimony admissible, the trial court stated that Sergeant Russell was an eyewitness to the drug transaction and, therefore, would be permitted to testify about what he saw. Sergeant Russell testified that he actually saw the exchange between Veasley and

Jackson. Because the trial court did not abuse his discretion by allowing this testimony, we find no error. Accordingly, the decision of the trial court is affirmed in all respects.

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.